

Attachment A

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

FILED

APR 22 2019

U.S. DISTRICT COURT
ELKINS WV 26241

Petition for Habeas Corpus
Pursuant to 28 U.S.C. § 2241

STEVEN MARTINEZ Reg. #45757-019)
USP-HAZELTON)
P.O. Box 2000)
Bruceton Mills, W.V. 26525,)
(Full name under which you were convicted,)
prison number, place of confinement, and)
full mailing address)
Petitioner,)
vs.)
JOE COAKLY, WARDEN USP-HAZELTON,)
WILLIAM BARR, ATTORNEY GENERAL,)
(Name of Warden or other authorized person)
where you are incarcerated)
Respondent.)

Civil Action No. 3:19cv59
(to be assigned by Clerk)

Groh
Trumble
Sims

Important notes to read before completing this form:

★ Please read the entire petition before filling it out. Answer only those questions which pertain to your claim(s).

1. This petition concerns (check the appropriate box):

a conviction
 a sentence
 jail or prison conditions
 prison disciplinary proceedings
 a parole problem
 other, state briefly: _____

Attachment A

2. Are you represented by counsel? Yes No

If you answered yes, list your counsel's name and address: _____

3. List the name and location of the court which imposed your sentence:

United States District Court for the Southern District
Court of New York

4. List the case number, if known: S1 95 Cr. 284 (LAK)

5. List the nature of the offense for which the sentence was imposed:

Murder 18 U.S.C §§ 1111, 1114; Conspiracy to murder 18 U.S.C. § 1117. Underlying charges dismissed on sentencing for robbery, 18 U.S.C. § 2114, and conspiracy to rob 18 U.S.C. § 371.

6. List the date each sentence was imposed and the terms of the sentence:

November 7, 1996; committed to the Attorney General of the United States or her designee for the rest of my life.

7. What was your plea to each count? (Check one)

Guilty
 Not Guilty
 Nolo Contendere

Attachment A

8. If you were found guilty after a plea of not guilty, how was that finding made?

A jury
 A Judge without a jury
 A Magistrate Judge without a jury

9. Did you appeal from the judgment of conviction or imposition of the sentence?

Yes No

10. If you did appeal, give the following information for each appeal:

A. Name of Court: Court of Appeals for the Second Circuit
B. Result: Affirmed conviction
C. Date of Result: September 2, 1999
D. Grounds raised (List each one): 1) Deprived of right to confront witnesses. 2) Court abused it's discretion in denying motion for new trial. 3) Deprived right to be present during voir dire. 4) Violation of 18 U.S.C. § 201 (c) (2). 5) Co-defendants points adopted.

Note: if you filed an appeal in more than one court, attach an additional sheet of paper of the same size and give all of the information requested in Question 10, A through D.

11. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any court, state or federal? This is called a post-conviction pleading.

Yes No

If your answer was yes, complete the following sections:

A. First post-conviction proceeding:

1. Name of Court: Southern District of New York

Attachment A

2. Nature of Proceeding: Rule 33 motion, for New Trial
3. Grounds Raised: Denied effective assistance of counsel.
4. Did you receive an evidentiary hearing? Yes No
5. Result: Was not prejudiced by counsel, who moved for Brady
6. Date of Result: November 6, 1996

B. Second post-conviction proceeding:

1. Name of Court: Southern District of New York
2. Nature of Proceeding: 28 U.S.C. § 2255
3. Grounds Raised: Denied effective assistance counsel
4. Did you receive an evidentiary hearing? Yes No
5. Result: Denied petition, but never adjudicated on Amended
6. Date of Result: March 12, 2001

C. Did you appeal to the result of the post conviction proceeding(s) to the highest court having jurisdiction?

1. First proceeding: Yes No Result: _____
2. Second proceeding: Yes No Result: Denied

D. If you did not appeal the adverse result of the post-conviction proceeding(s), explain briefly why not: Appeal Attorney did not mention the First Rule 33 motion because it would have discredit the Government's theory.

12. For your information, the following is a list of the most frequently raised grounds for relief in applications for habeas corpus pursuant to 28 U.S.C. §2241. You may raise any grounds which you may have other than those listed. However, in this application, you should raise all available grounds on which you base your petition. **Do not check** any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. **The petition will be returned to you if you merely check one or more of the grounds:**

- A. U.S. Parole Commission unlawfully revoked my parole.
- B. Federal Bureau of Prisons unlawfully computed my sentence.

Attachment A

- C. Federal Bureau of Prisons unlawfully denied me credit for time served in state or federal prison.
- D. Federal Bureau of Prisons or State prison system unlawfully revoked my good time credits.
- E. There is an unlawful detainer lodged against me.
- F. I am a citizen and resident of a foreign country and I am in custody for an act which I had a right to commit under the laws of my country.
- G. The act for which I was convicted is no longer considered to be a crime, and I cannot raise this issue in a §2254 petition or a §2255 motion.

CAUTION: if you fail to set forth all of the grounds in this petition at this time, you may be barred from presenting additional grounds at a later date.

State clearly every ground on which you are seeking relief. Summarize briefly the facts supporting each ground. If necessary, attach a total of five (5) typed or ten (10) neatly printed pages maximum for all grounds and all attachments.

A. Ground one:

See Attachment Memorandum of Law

Supporting facts: tell your story briefly without citing cases or law. You are cautioned that you must state facts, not conclusion, in support of your grounds. A "rule of thumb" to follow is this: who did exactly what to violate your rights at what time and place).

See Memorandum of Law

B. Ground two:

Attachment A

Supporting facts:

See Memorandum of Law

C. Ground three:

Supporting facts:

D. Ground four:

Attachment A

Supporting facts:

13. Were all of the above grounds presented to another court, state or federal? If not, state which grounds were not presented. If yes, state the name of the court, date of decision, and the nature of the outcome:

14. If this petition concerns prison disciplinary proceedings, a parole problem, computation of sentence, or other case under 28 U.S.C. § 2241, answer the following questions:

A. Did you present the facts in relation to your present petition in the prison's internal grievance procedure?

Yes No

1. If your answer to "A" above was yes, what was the result:

Denied

Attachment A

2. If your answer to "A" above was no, explain:

B. If you are a federal prisoner, did you present your claim to the Bureau of Prisons or other federal agency for administrative action?

Yes No

1. If your answer to "B" above was yes, what was the result:

Denied, BOP. States they do not determine the illegality of a sentence.

2. If your answer to "B" above was no, explain:

15. Relief: State here, as briefly as possible, exactly what you want the court to do for you:

1. Make no legal arguments.
2. Cite no cases or statutes.

To be immediately release from this illegal sentence in the interest of justice.

Attachment A

16. If a previous motion to vacate or modify a prisoner's sentence, pursuant to Section 2255, was not filed, or if such a motion was filed and denied, the reasons why Petitioner's remedy by way of Section 2255 is inadequate or ineffective to test the legality of the detention.

See Memorandum of Law.

Signed this 18th day of April, 2019.
(day) (month) (year)

Steve Martinez
Your Signature

Signature of Attorney (if any)

I declare (or certify, verify, or state), under penalty of perjury, that the foregoing is true and correct.

Date of Signature: April 18, 2019

Steve Martinez
Your Signature

Attachment A

Second Appeal

Name of Court: **United States Supreme Court**

Result: **Certiorari denied**

Date of result: **January 18, 2000**

Grounds raised: **1) Deprived of right to confront adverse witnesses.**
2) Court abused it's discretion in denying motion for new trial. **3) Deprived right to be present during voir dire.** **4) Violation of 18 U.S.C. § 201 (c) (2).** **5) Co-defendants points adopted.**

Third Appeal

Name of Court: **United States District Court for the Southern District of New York**

Result: **Denied**

Date of result: **April 22, 2008**

Docket number: **08-cv-02103**

Grounds raised: **Title 42 U.S.C. § 1983, Governmental Action which is subject to the Fourth Amendment exclusionary rule, and monetary damages.** **1) Postal Inspectors, et al.; without probable cause compelled Plaintiff to harassment.**

Other Appeals

Name of Court: **United States District for the District of Columbia**

Result: **Denied**

Date of result: **January 17, 2012**

Docket number: **Civil Action 11-1105 (JEB)**

Grounds raised: **Complaint under 5 U.S.C. § 552 (b) Freedom of Information Act.** The Defendant, namely the United States Postal Service has failed to release requested information of decease under the Freedom of Information Act / Privacy Act.

Attachment A

Other Appeals

Name of Court: Court of Appeals for the Second Circuit

Result: Denied

Date of result: January 15, 2013

Docket number: 12-4955

Grounds raised: Newly discovered evidence within the meaning of second successive 28 U.S.C. § 2255 (h).

Name of Court: United States Court of Appeals for the Eleventh Circuit

Result: Denied

Date of result: July 13, 2015

Docket number: 14-15264

Grounds raised: Mr. Martinez is unlawfully confined for murder. The Trial Court Lacked Subject Matter Jurisdiction over counts 1, and 2 of the indictment, under 28 U.S.C. § 2241

Name of Court: United States District Court for the Northern District of West Virginia

Result: Denied

Date of result: February 2, 2017

Docket number: 2:16-CV-27

Grounds raised: Whether as a matter of statutory interpretation a "Contract Driver" are part of the postal service within the meaning of 18 U.S.C. § 1111, and § 1114?

Name of Court: United States Court of Appeals for the Second Circuit

Result: Denied

Date of result: April 25, 2017

Docket number: 17-865

Grounds raised: Newly discovered evidence/Appellant is actually innocent of murder; sentence to incorrect understanding of law when the alleged victim is still alive.

Attachment A

Other Appeals

Name of Court: **United States Court of Appeals for the Second Circuit**

Result: **Denied**

Date of result: **October 24, 2018**

Docket number: **18-1592**

Grounds raised: **Mandamus petition to compel the District Court to rule on case No.17-865**

Name of Court: **United States District Court for the Eastern District North Carolina Western Division**

Result: **Denied**

Date of result: **December 14, 2018**

Docket number: **5:17-CT-3155-BO**

Grounds raised: **Suit under 42 USC sec. 1983, BOP employees at FMC Butner had retaliated against him and deprived him of his constitutional rights.**